

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

**[PROPOSED]
PROCEDURES FOR ISSUANCE OF**

CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126

for

**Discharges of Waste to Marine Sediment in San Diego Bay Within And Adjacent to
Southwest Marine, Inc. and National Steel And Shipbuilding Company Leaseholds
Generally Between Sampson Street Extension and Mouth of Chollas Creek**

July 14, 2005

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340

Phone • (858) 467-2952 • Fax (858) 571-6972

<http://www.waterboards.ca.gov/sandiego>

To request copies of Proposed Procedures for Issuance of Cleanup and Abatement Order No. R9-2005-0126 please contact Mr. Michael McCann, Supervising Water Resource Control Engineer at (858) 467-2988, email: MMcCann@waterboards.ca.gov or Mr. John Robertus at (858) 467-2987, email: JRobertus@waterboards.ca.gov.

Documents also are available at: <http://www.waterboards.ca.gov/sandiego>

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A. INTRODUCTION

The Regional Board is considering development and issuance of a cleanup and abatement order for discharges of metals and other pollutant wastes to San Diego Bay marine sediment and waters. On April 29, 2005 the Regional Board circulated for public review and comment a tentative version of the cleanup and abatement order (see tentative Cleanup and Abatement Order No. R9-2005-0126). A copy of this document is posted on the Regional Board website at <http://www.waterboards.ca.gov/sandiego>.

Prior to the issuance of a final cleanup and abatement order in this matter, the Regional Board will first provide an opportunity for all Parties and interested persons¹ to review technical information in the files of the Regional Board and comment on issues pertaining to the proposed cleanup and abatement order and to respond to evidence, documents, and comments submitted by other Parties and interested persons. All technical evidence and documentation that Parties and interested persons would like the Regional Board to consider must be submitted to the Regional Board in writing during this period. The Regional Board will hold public hearings on this matter once all written submittals have been made. The purpose of the public hearings is for the Regional Board to receive final comments from Parties and interested persons and to ask questions regarding written submittals.

The Regional Board's consideration of testimony and written submittals by Parties and interested persons may result in revisions to the current version of tentative Cleanup and Abatement Order No. R9-2005-0126 during the course of the proceedings. Thus the finalized version of the tentative Cleanup and Abatement Order that is ultimately considered for adoption by the Regional Board at the conclusion of the proceedings may differ markedly from the tentative version of the Cleanup and Abatement Order issued on April 29, 2005.

This document, *Proposed Procedures for Issuance of Cleanup and Abatement Order No. R9-2005-0126*, contains procedures applicable to Parties and interested persons participating in the Regional Board's proceedings in this matter. The Regional Board has established these

¹ "Parties" to the proceeding include the persons to whom the tentative cleanup and abatement order is directed, and any other person whom the Regional Board determines should be designated as a party. "Person" includes an individual, partnership, corporation, governmental subdivision or units of a governmental subdivision, or public or private organization or entity of any character.

procedures to ensure an orderly, efficient, and impartial administrative process for the development of an appropriate Cleanup and Abatement Order and to provide a fair opportunity for all Parties and interested persons to fully participate in the proceedings. These procedures will remain in effect until the Regional Board issues a final Order in this matter, unless modified by the Regional Board.

The Regional Board will conduct a pre-hearing conference to address procedural matters. A member of the Regional Board will chair the pre-hearing conference. The Regional Board will not discuss the merits of any substantive issues regarding tentative Cleanup and Abatement Order No. R9-2005-0126 at the conference, including which persons should be required to undertake cleanup and abatement for the marine sediments, or the appropriate level and extent of cleanup and abatement to be required.

B. STATUTES AND REGULATIONS GOVERNING THE PROCEEDINGS

The Regional Board proceedings in this matter will be conducted in accordance with Title 23 California Code of Regulations (CCR) Division 3, Chapter 1.5, sections 648, *et seq.*, Chapter 4.5 of the California Administrative Procedure Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code. The hearing will not be conducted as a formal hearing under Chapter 5 of the Administrative Procedure Act (commencing at Government Code section 11500).

Title 23 California Code of Regulations (CCR) can be accessed on the Internet at <http://www.calregs.com> and the California Evidence Code and Government Code can be accessed on the Internet at <http://www.leginfo.ca.gov/calaw.html>.

C. PARTICIPANTS IN THE PROCEEDINGS

Participants in the Regional Board proceedings are either “parties” or “interested persons”.

Each Party to the proceeding may present evidence, call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call, and examine an adverse Party or witness as if under cross examination. Each Party may also present non-evidentiary policy statements that may refer to evidence in the record.

Interested persons may submit non-evidentiary policy statements or comments only. Interested persons are not subject to cross-examination but may be asked to respond to clarifying questions from the Regional Board, or others, at the discretion of the Board. Interested persons may not cross-examine other persons participating in the proceedings.

D. PARTICIPANTS DESIGNATED AS PARTIES TO THE PROCEEDINGS

The following list identifies participants who are currently designated as Parties in the Regional Board proceedings on this matter:

1. National Steel and Shipbuilding Company (NASSCO)
2. Southwest Marine, Inc.
3. City of San Diego
4. Marine Construction and Design Company and Campbell Industries, Inc.
5. Chevron, A Subsidiary of ChevronTexaco
6. BP
7. San Diego Gas and Electric, A Subsidiary of Sempra Energy Company
8. United States Navy
9. San Diego Bay Council

All other persons who wish to participate in the proceedings as “Parties” must request designation by the Regional Board. Interested persons seeking recognition as “Parties” must submit a written request for designation as a party to the Regional Board by 4:00 p.m. on the second Friday following promulgation of the Procedures. Requests should be addressed to:

Mr. John Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340.

E. REGIONAL BOARD SEPARATION OF FUNCTIONS

The Regional Board staff participating in the proceedings are separated into two groups to help assure the fairness and impartiality of the Regional Board’s proceedings.

1. **Sediment Site Cleanup Team:** The Shipyard Sediment Site Cleanup Team (**Cleanup Team**), will assume responsibility for development of a tentative cleanup and abatement order and a supporting Technical Report, evaluating testimony and written submittals from Parties and other interested persons, and presenting evidence and recommendations to the Regional Board on sediment cleanup issues that will be described in a public hearing notice.
2. **Shipyard Sediment Site Advisory Team:** The Shipyard Sediment Site Advisory Team (**Advisory Team**), will assist the Regional Board Chair in matters such as evaluating requests for designated party status, enforcing deadlines and other limitations on written and electronic submissions and exhibits, and preparing for and conducting the proceedings. The Advisory Team will also provide advice to the Regional Board Chair and other Regional Board members in their deliberations on the evidence presented in the proceedings.

Consistent with this separation of functions, members of the Cleanup Team will not have any contact with Regional Board members or members of the Advisory Team on matters relating to the proceedings, except where those contacts are consistent with the limitations on *ex parte* communications described in Section F., Ex Parte Communications.

The following Regional Board staff will serve as members of the Cleanup Team:

Craig Carlisle, Senior Engineering Geologist
Tom Alo, Water Resource Control Engineer
Alan Monji, Environmental Scientist
Peter Peuron, Environmental Scientist
Ben Tobler, Water Resource Control Engineer

David Barker, Supervising Water Resource Control Engineer, will supervise the Cleanup Team. Art Coe, Assistant Executive Officer, will in turn supervise David Barker in this matter. For this matter only, John Robertus, Executive Officer will not be supervising Art Coe, David Barker, or the Cleanup Team. The State Water Resources Control Board, Office of Chief Counsel is assigning John Richards, Senior Staff Counsel to provide legal support to the Cleanup Team.

John Robertus, Executive Officer, and Mike McCann, Supervising Water Resource Control Engineer, will serve as members of the Advisory Team. The Office of Chief Counsel is assigning Phil Wyels, Assistant Chief Counsel to provide legal support to the Advisory Team. Phil Wyels will not be supervising John Richards for this matter.

It is anticipated that the staffing of either or both teams may be increased during the course of the proceedings. Staff assigned to the Advisory Team will not include any individuals who have served as members of the Cleanup Team or who actively participate in formulating the terms and conditions of a tentative cleanup and abatement order or a supporting Technical Report in this matter.

F. EX PARTE COMMUNICATIONS

There shall be no *ex parte* communications, direct or indirect, regarding any substantive issues within the scope of the proceedings, to the Chair of the Regional Board, any other member of the Regional Board, or a member of the Regional Board's Advisory Team, from the Cleanup Team, any Party, or any interested person participant, without notice and opportunity for the Cleanup Team and all Parties to participate in the communication. This rule shall apply during the pendency of the proceedings, commencing no later than the Regional Board's adoption of these procedures.²

² See Government Code sections 11430.10 – 11430.80.

Communications regarding non-controversial procedural matters are not ex parte communications and are not restricted. These communications should be directed to Regional Board Advisory Team Staff or John Robertus, Regional Board Executive Officer.³

G. KEY ISSUES

The Regional Board's decision on development and issuance of a cleanup and abatement order will be based upon the evidence in the files of the Regional Board and the record developed during the proceedings conducted by the Regional Board, including any public hearings held during the course of the proceedings. Parties and interested persons will be invited to submit testimony and other exhibits on the following issues that will be considered by the Regional Board:

1. **What Persons Should Be Required to Provide Cleanup and Abatement for Waste Discharged to, or Deposited in, Marine Sediments of San Diego Bay?**
2. **What Constitutes an Appropriate Approach for Designating "Background" Sediment Quality and Water Quality Conditions for Marine Sediments in San Diego Bay?**
3. **Is Cleanup to "Background" Sediment Quality Conditions Feasible?**
4. **If Cleanup to "Background" Sediment Quality Conditions Is Not Feasible, What Alternative Cleanup Levels Will Satisfy the Requirements of State Water Resources Control Board Resolution No. 92-49?**
5. **What Is The Incremental Benefit Between the Least Stringent Qualifying Cleanup and Each Increment Of Attaining More Stringent Cleanup Levels Compared With the Incremental Cost of Achieving Those Levels?**
6. **What Time Schedule Should the Regional Board Prescribe for Cleanup and Abatement?**

H. ORDER OF PROCEEDINGS

The Regional Board will provide an opportunity for public participation in the development and issuance of the appropriate Cleanup and Abatement Order. Parties and interested persons will be entitled to review and provide written comments on technical information applicable to the relevant issues, and to review and provide written comments on the preliminary tentative Cleanup and Abatement Order. The Regional Board will in turn convene a public hearing to hear testimony from parties and interested persons summarizing their written

³ See Government Code section 11430.20 (b).

submittals. All testimony, technical documentation, and factual information to be considered by the Board must be submitted in writing in advance of the public hearing. Written submittals from a Party must be sent simultaneously to all other Parties. The requirement for pre-submission and service of testimony and exhibits provides the Regional Board and the Parties an opportunity to fully familiarize themselves with the subject of the proposed testimony, prepare for cross-examination, and (in the case of the Parties) to prepare possible rebuttal evidence. The scope of oral testimony at the public hearing will therefore be limited to summarizing the previously submitted written evidence and making policy statements and will be subject to strict time limits. The order of the proceedings is as follows:

1. Cleanup And Abatement Order Technical Report

The Regional Board will issue a public notice announcing the availability, for public review and comment, of a draft Technical Report providing the rationale and factual information supporting the proposed findings and directives of tentative Cleanup and Abatement Order No.R9-2005-0126 (Tentative Cleanup and Abatement Order No.R9-2005-0126 was previously released for public review and comment on April 29, 2005). Forty-five (45) days will be provided for public comment on the Tentative Cleanup and Abatement Order and supporting Technical Report. The public notice will include the deadline for submittal of comments and will contain the provisions described in Item I., Testimony and Other Exhibits below.

2. Written Submittals On Comments Received By The Regional Board

Following the deadline for submittal of comments in Item H.1., above, the Regional Board will issue a second public notice soliciting responses and rebuttal from Parties and other interested persons on the written submittals received by the Regional Board under Item H.1. above. Forty-five (45) days will be provided for response and rebuttal. The public notice will include the deadline for submittals and will contain the provisions described in Item I., Testimony and Other Exhibits below.

3. Public Hearing

Following the submittal of all written comments, responses, and rebuttal, and any technical evidence pursuant to Items H.1. and H.2., above, the Regional Board will provide notice and convene a public hearing to consider testimony, comments, written submittals, and other evidence submitted under Items H.1. and H.2. above. The hearing will be limited to this purpose. The hearing officer will close the hearing when testimony by Parties and other interested persons is concluded; the Regional Board will not allow the introduction of written submittals, evidence, or exhibits following the close of the hearing. The Regional Board will discuss the testimony and other evidence taken at the hearing, either immediately following the hearing or at a subsequent time. The Regional Board will communicate any issues of concern to the Cleanup Team and direct the Team to prepare a technical analysis and tentative Cleanup and Abatement Order (see below) that addresses these issues.

4. Tentative Agenda Documents

The Cleanup Team will prepare Tentative Agenda Documents, comprised of a tentative Cleanup and Abatement Order, and a Technical Report providing the rationale and factual information supporting the findings and directives of the tentative Cleanup And Abatement Order, including responses to evidence and comments received pursuant to Items H.1., H.2., and H.3. The Regional Board will issue a public notice announcing the availability of the Tentative Agenda Documents for public review and comment. The Regional Board will accept only comments addressing revisions made to the tentative Cleanup and Abatement Order and revised Technical Report. Thirty (30) days will be provided for public comment. The public notice will include the deadline for submittal of comments and will contain the provisions described in Item I., Testimony and Other Exhibits below.

5. Public Hearing on Tentative Agenda Documents

The Regional Board will provide notice and convene a second public hearing to consider the written submittals and other evidence submitted under Item H.4. The hearing will be limited to this purpose. The hearing officer will close the hearing when testimony by Parties and other interested persons is concluded; the Regional Board will not allow the introduction of written submittals, evidence, or exhibits following the close of the hearing. The Regional Board will deliberate on the testimony and other evidence taken at the hearing, either immediately following the hearing or at a subsequent time. Pursuant to the outcome of the deliberations the Regional Board may elect to act on the Tentative Agenda Documents described in Item H.4. and issue a final Cleanup and Abatement Order based on the revised tentative Cleanup and Abatement Order. Alternatively the Regional Board may direct the Cleanup Team to make adjustments to the Tentative Agenda Documents and issue an Order at a subsequent Regional Board meeting.

I. TESTIMONY AND OTHER EXHIBITS

Each participant proposing to submit testimony or other exhibits⁴ to be used as evidence, or non-evidentiary policy or comment statements, for consideration by the Regional Board in this proceeding, shall first submit all such information in writing to the Regional Board by 4:00 pm on the last day of the public comment period specified in the applicable public notice. The Regional Board will strictly enforce the deadlines and other procedures on written and electronic submissions and exhibits provided below.

1. Parties

Parties to the proceedings shall submit all written testimony, exhibits, evidence, and supporting technical documentation to the Regional Board in electronic format by 4:00 p.m. on the date specified in the public notice, with 20 paper copies of each document

⁴ Exhibits include written testimony, technical documentation, factual information, expert opinions, statements of qualifications of expert witnesses, and other documents to be used as evidence.

and exhibit for Regional Board use. Each submittal shall include, in both electronic and paper copy formats

- a. A completed Exhibit Identification Index (see Attachment A); and
- b. A Statement of Service for each party with the manner of service for each party indicated.

Parties shall serve one copy of their written submittals and exhibits on every other party on or before the date and time of submittal to the Regional Board. Parties may serve those parties who agree to electronic service with an electronic copy of their written submittals, exhibits, and the forms required under Items I.1.a. and I.1.b.. Parties must serve paper copies of submittals, exhibits, and forms on those parties who do not agree to electronic service. Electronic submissions must be in accordance with the Electronic Submission Format provided below.

2. Document Distribution by Cleanup Team

The Cleanup Team will post a copy of the draft Technical Report described in Item H.1., together with copies of any exhibits, evidence, and supporting technical documentation cited in the Technical Report, and the Tentative Agenda Documents described in Item H.4. on the Regional Board web site. The Regional Board will distribute a copy of the draft Technical Report, or the Tentative Agenda Documents, respectively, to each of the Parties, upon issuance of the public notice announcing the availability of those documents, together with:

- a. A completed Exhibit Identification Index (see Attachment A); and
- b. A Statement of Service for each party with the manner of service for each party indicated.

The Cleanup Team will post any written testimony, exhibits, evidence, and supporting technical documentation submitted by the parties, and any comments submitted by interested persons, on the Regional Board web site for this matter as it is submitted. The Cleanup Team will post any additional technical documentation (*i.e.*, not submitted by parties) relied upon by the Cleanup Team to respond to comments and prepare subsequent versions of the Technical Report on the Regional Board web site for this matter when any such iteration of the Technical Report is made available. The Cleanup Team will distribute documents in electronic format to those parties who agree to electronic service and will distribute paper copies of submittals, exhibits, and forms to those parties who do not agree to electronic service. Electronic distributions will be in accordance with the Electronic Submission Format provided in Item I.4. below.

3. Interested Persons

Interested persons who are not participating as Parties to the proceeding may only submit written non-evidentiary policy statements or comments. Interested persons must submit one copy of all written submittals and exhibits pertaining to policy statements or comments to the Regional Board only. Interested persons may make electronic

submissions to the Regional Board; electronic submissions must be in accordance with the Electronic Submission Format provided below. Interested persons are not entitled to receive service of written submittals and exhibits or other documents served on the Parties to the proceeding.

4. Electronic Submission Format

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a format supported by Microsoft Word 2000 or Microsoft Excel 2000. Electronic submissions to the Regional Board of documents less than 5 megabytes in size may be sent via electronic mail to CAOR9-2005-0126Hearing@waterboards.ca.gov with subject of **“Hearing Exhibit, CAO No. R9-2005-0126, Shipyard Sediment Site.”** Electronic submittals to the Regional Board of documents greater than 5 megabytes in size should be sent by mail, in PDF format on compact disk (CD™) media. Electronic service on Parties shall be in the same format as electronic submissions to the Regional Board, but should be submitted to the other Parties by mail on CD.

5. Submittals to the Regional Board

All written paper copy or disk media submittals to the Regional Board shall be addressed as follows:

Mr. John Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

6. Additional Exhibit Requirements

The following additional requirements apply to exhibits:

- a. Exhibits shall be organized and subdivided in sections by the Key Issue topics described in Item G., Key Issues.
- b. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development and operation of the studies or models.
- c. Parties who propose to offer expert testimony must include a statement of qualifications of the expert witness.
- d. Parties must clearly identify any portions of their written submittals that are non-evidentiary policy statements.

- e. The Regional Board may, at the discretion of the presiding officer, take administrative notice of relevant, otherwise admissible, public records of the Regional Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the Regional Board before the notice of the hearing is issued⁵. A participant offering an exhibit for administrative notice shall advise the other Parties and the Regional Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and, if applicable, the specific file folder or other exact location in the Regional Board's records where the document may be found.
- f. A participant seeking to enter in evidence, as an exhibit, a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant.
- g. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
- h. Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 1/2 x 11 inches. Alternatively participants may submit for the hearing record, a reduced copy of a large format original if it is readable.

J. PUBLIC HEARING PROCEDURES

The Regional Board will implement the procedures described below so that the Board can conduct the public hearings in an orderly and expeditious manner.

1. Order of the Hearings

The order of the hearings will be conducted in accordance with the procedures for hearings set forth in Title 23 California Code of Regulations (CCR) Division 3, Chapter 1.5, sections 648 – 649.6 except that the presiding hearing officer (in this case the Regional Board Chair), may modify the order for good cause. Title 23 California Code of Regulations (CCR) can be accessed on the internet at <http://www.calregs.com>.

2. Notice of Intent to Appear

Each Party or interested person intending to present testimony or other evidence at the hearing must submit a completed Notice of Intent to Appear (see Attachment B) to the Regional Board containing the name of each proposed witness, a brief description of the

⁵ See 23 CCR Division 3, Chapter 1.5, section 648.3

proposed testimony of each witness, and an estimate of the time required for each witness to present a brief oral summary of the witness's written testimony. Parties shall also serve one copy of the completed Notice of Intent to Appear to every other Party on the service list provided in the hearing notice following the service procedures described in Item I.1. above. The Notice of Intent to Appear and the Statement of Service for each Party must be received by the Regional Board by 4:00 p.m. on the date specified in the public hearing notice, and served on the other Parties on or before that date.

Parties should indicate how they intend to participate in the hearing by marking the appropriate box on the Notice of Intent to Appear. Parties who do not intend to present a case in chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Parties who decide not to present a case in chief after having submitted a Notice of Intent to Appear should notify the Regional Board and other participants as soon as possible

Failure to submit a Notice of Intent to Appear in a timely manner will be interpreted by the Regional Board as waiver of the right to participate in the proceedings. If there is any change in the schedule of these proceedings, only those who have filed a completed Notice of Intent to Appear will be informed of the change.

3. Oral Testimony Time Limits

The Regional Board will prescribe time limits for Parties and interested persons to present oral testimony based upon the Board's estimate of the time required for each witness to present a brief oral summary of their previously submitted written evidence, policy statements, and comments. The time limits will be defined and described in a public hearing notice that will be issued following the Regional Board's receipt of the written submittals. The time limits will be strictly enforced in order to ensure that all Parties and interested persons have an opportunity to participate in the hearing.

4. Case in Chief Presentation

Each Party to the proceeding may present a case in chief addressing the key issues identified in the hearing notice. The case in chief will consist of any opening statement provided by the Party, oral testimony, introduction of exhibits, and cross examination of the Party's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the Party's exhibits in evidence upon a motion of the Party after the case in chief has been completed.

a. *Opening Statements*

At the beginning of a case in chief, the Party may make an opening statement briefly and concisely stating the objectives of the case in chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Any policy-oriented statements by a Party should be included in the Party's opening statement. At the beginning of a case in chief, the

Party may make an opening statement briefly and concisely stating the objectives of the case in chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Any policy-oriented statements by a Party should be included in the Party's opening statement.

b. *Oral Testimony*

All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Oral testimony that goes beyond the scope of summarizing written submittals previously submitted pursuant to Regional Board public notices described in Item H., will be excluded.

c. *Cross-Examination*

Cross-examination of a witness will be permitted on the Party's written submittals (excluding non-evidentiary policy statements), the witness' oral testimony, and other relevant matters. If a Party presents multiple witnesses, the hearing officer will decide whether the Party's witnesses will be cross examined as a panel. Cross-examiners will be subject to time limits set by the hearing officer. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by the hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony⁶. Ordinarily, only a Party or the Party's representative will be permitted to examine a witness, but the hearing officer may allow a Party to designate a person technically qualified in the subject being considered to examine a witness. Regional Board members and the Regional Board's counsel may ask questions at any time, and the Regional Board members and their Advisory Team staff may cross examine any witness at any time.

d. *Closing Statements and Legal Arguments*

At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer decides to request briefs, the briefs will be due no earlier than 30 days after the estimated date of availability of the Reporter's Hearing Transcript. A Party shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence.

⁶ See Government Code section 11513 (b).

If the hearing officer authorizes the Parties to file briefs, the Party shall submit 20 copies of the brief in paper copy form and one copy in electronic form to the Regional Board. Parties shall also serve one copy of their brief to every Party on the service list provided in the hearing notice. Parties may serve those Parties who agree to electronic service with an electronic copy of their brief. Parties must serve paper copies of their brief on those Parties who do not agree to electronic service. A statement of service, with manner of service indicated, shall be filed with each Party's exhibits. Electronic submissions must be in accordance with the Electronic Submission Format provided below.

5. Rules of Evidence

Only Parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

6. Policy Statements

The Regional Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not Parties to the proceeding⁷. Presentations will be limited to those interested persons who have submitted a completed Notice of Intent to Appear form to the Regional Board, as described in Item J.2., indicating clearly an intent to make only a policy statement or comment. Policy statements from interested persons will be heard after the hearing officer concludes Case in Chief presentations by Parties to the proceedings.

a. *Oral Testimony*

Oral summaries of policy statements will be limited to five minutes or other time limits established by the hearing officer. Oral testimony that goes beyond the scope of summarizing written policy statement submittals previously submitted pursuant to Regional Board public notices described in Item H., will be excluded. Interested persons with similar concerns should participate in a joint presentation of policy statements, and the Regional Board may limit such statements if they are repetitive.

b. *Cross-Examination*

Interested persons are not subject to cross-examination but may be asked to respond to clarifying questions from the Regional Board, or others, at the discretion of the Board or presiding hearing officer. Interested persons may not cross-examine other Parties.

7. Close of Hearing Record

⁷ See 23 CCR Division 3, Chapter 1.5, section 648.1(d).

The Regional Board will not allow the introduction of written submittals, evidence, or exhibits following the close of the hearing.

K. REQUESTS FOR EXCEPTIONS TO THE PROCEDURES

Any requests for exceptions to these procedural requirements shall be filed in writing to:

Mr. John Robertus

Executive Officer

California Regional Water Quality Control Board, San Diego Region

9174 Sky Park Court, Suite 100

San Diego, California 92123-4340

To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

L. IF YOU HAVE QUESTIONS

Questions concerning these procedures may be addressed to Mr. Michael McCann,
Supervising Water Resource Control Engineer at (858) 467-2988, email:

MMcCann@waterboards.ca.gov or Mr. John Robertus at (858) 467-2987, email:

JRobertus@waterboards.ca.gov.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

NOTICE OF INTENT TO APPEAR IN PUBLIC HEARING

**TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126,
Discharges of Waste to Marine Sediment in San Diego Bay Within And Adjacent to
Southwest Marine, Inc. and National Steel And Shipbuilding Company Leaseholds
Generally Between Sampson Street Extension and Mouth of Chollas Creek.**

1. PARTY NOTICE OF INTENT TO APPEAR

NOTE: Persons who are designated as "Parties" in the Regional Board proceedings on this matter, and intending to present testimony or other evidence at the hearing, should provide the information requested in this box. "Parties" to the proceeding include the persons to whom the tentative cleanup and abatement order is directed, and any other person whom the Regional Board determines should be designated as a party. The following list identifies participants who are currently designated as Parties in the proceedings: _____ Please do not complete this box if your name or organization is not on this drop down list.

The following Party plans to participate in the public hearing on issuance of Cleanup and Abatement Order No. R9-2005-0126.

Organization:		
Address:		
City:	State:	Zipcode:

will present a policy statement only.

will participate in cross-examination only.

2. INTERESTED PERSON NOTICE OF INTENT TO APPEAR

NOTE: Interested persons, who are not participating as Parties to the proceeding, and intending to present testimony at the hearing, should provide the information requested in this box. Please do not complete this box if you are designated as a Party in the Regional Board proceedings (See Box 1. PARTY NOTICE OF INTENT TO APPEAR).

The following Interested Person plans to participate in the public hearing on issuance of Cleanup and Abatement Order No. R9-2005-0126.

Name:			
Organization:			
Address:			
City:	State:	Zipcode:	E-Mail Address
Daytime Phone:	Cell Phone:	Fax	

